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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9 GRANT CARDONE,

10                   Plaintiff and Counterclaim  
11                   Defendant,

12                   v.

13 STONER & ASSOCIATES, INC., a Washington  
corporation, et al.,

14                   Defendant.

CASE NO. C03-513RSM

ORDER ON DEFENDANTS' MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT

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16 DEALER DATA SERVICES, a Washington  
sole proprietorship,

17                   Counterclaim Plaintiff,

18                   v.

19 THE CARDONE GROUP OF CENTRAL  
20 FLORIDA, INC., a Florida corporation, et al.,

21                   Counterclaim Defendants.

22  
23                   This matter is now before the Court on the motion of defendants and counterclaim plaintiffs  
24 Stoner & Associates ("STS") and Mike Stoner for partial summary judgment on the validity of plaintiff's  
25 copyrights. Dkt. # 125. Defendants seek dismissal of plaintiff's infringement claims on the basis that the  
26 copyrights held by plaintiff are invalid. Defendants also contend that plaintiff cannot prove any damages

27 ORDER ON DEFENDANT'S MOTION FOR  
28 PARTIAL SUMMARY JUDGMENT - 1

1 with respect to any of his claims. Plaintiff has opposed the motion. For the reasons set forth below, the  
2 Court finds that further briefing is required before it can rule on the motion.

3

#### 4 DISCUSSION

5 The parties are familiar with the facts, which will be recited here only insofar as they are relevant  
6 to this current dispute. Plaintiff Grant Cardone filed this action seeking damages for, and an injunction  
7 against, defendants' alleged infringement of plaintiff's copyright on certain sales training manuals used by  
8 automobile dealerships. Defendants answered with a counterclaim against plaintiff and others for  
9 infringement of copyrights on two of defendants' software products, as well as breach of contract, breach  
10 of fiduciary duty, unfair competition, interference with contracts, and misappropriation. Plaintiff's  
11 earlier-filed motion for partial summary judgment of dismissal as to the copyright infringement  
12 counterclaim has been denied. It is now defendants' turn to assert that plaintiff's claims of infringement  
13 must be dismissed. However, on the record now before the Court, it cannot rule on this motion.

14 A party asserting a claim of copyright infringement claim must prove (1) ownership of a valid  
15 copyright on a work, and (2) unauthorized copying of "constituent elements of the work that are  
16 original." Feist Publications v. Rural Telephone Service, 499 U.S. 340, 361 (1991). As in the prior  
17 motion, it is the validity of the copyrights which has been put in issue in this motion. Defendants assert,  
18 in effect, that plaintiff's copyrights are invalid because the works are not original. They have presented,  
19 as exhibits, actual examples of numerous other sales materials from which, they allege, plaintiff's  
20 workbooks are derived. Plaintiff has, in turn, presented over 100 pages of exhibits to support his  
21 argument for the validity of his copyrights.

22 As a threshold issue, plaintiff argues in opposing summary judgment that

23 Grant Cardone's copyrights in his workbooks and Audiotape are presumed valid. This  
24 is because a certificate of copyright registration serves as *prima facie* evidence of ownership  
25 of a valid copyright where registration is made within five years of a first publication of a  
work, **as was the case here**.

26 Plaintiff's Opposition, Dkt. # 25, p. 6 (citations omitted, emphasis added). This is a correct statement of  
27 the law. However, if it is determined that plaintiff's copyrights are not entitled to the benefit of this

28 ORDER ON DEFENDANT'S MOTION FOR  
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1 presumption, the Court may not need to engage in a lengthy comparison of the materials presented to  
 2 evaluate the originality of plaintiff's works. The Court therefore turns first to an examination of the  
 3 certificates of registration, to determine whether the presumption of validity does in fact apply.

4 Two copyright registration certificates appear in the record as exhibits to the First Amended  
 5 Complaint. These cover the works "Re-Engineering the Sales Process into the 21<sup>st</sup> Century" ("Re-  
 6 Engineering"), TX 5-649-103; and "Managing in the 21<sup>st</sup> Century" ("Managing"), TX 5-649-104.<sup>1</sup> Dkt.  
 7 # 25, Exhibit A, B. The dates on the two certificates leave the application of the presumption of validity  
 8 in doubt. Both applications give April 1, 1997, as the date of first publication of the work. Both  
 9 applications are signed and dated February 13, 2002, a date within the five-year window. However, both  
 10 certificates indicate that the application was received, and the certificate of registration issued, on  
 11 February 19, 2003, outside the five-year window.

12 As plaintiff asserts, timely copyright registration establishes a presumption of validity. "In any  
 13 judicial proceedings the certificate of a registration made before or within five years after first publication  
 14 of the work shall constitute *prima facie* evidence of the validity of the copyright and of the facts stated in  
 15 the certificate." 17 U.S.C. § 410(c). This presumption of validity is a rebuttable one. *See, e.g., Pickett*  
*v. Prince*, 207 F. 3d 402 (7<sup>th</sup> Cir. 2000); *Sobhani v. @radical.media, Inc.*, 257 F. Supp. 2d 1234 (C.D.Cal.  
 17 2003). However, if from the outset the presumption does not apply, "[t]he evidentiary weight to be  
 18 accorded the certificate of a registration . . . shall be within the discretion of the court." 17 U.S.C. §  
 19 410(c).

20 Before the Court can determine whether to exercise that discretion, the certificate of registration  
 21 date issue must be resolved. Plaintiff makes the conclusory statement, as shown above, that the  
 22 presumption applies—even as to the audiotapes, for which no certificate of registration appears in the  
 23 record. *See* FN 1. Defendants have not addressed the issue of the presumption of validity as to any of  
 24 the three copyrights. Yet the Court declines to proceed to an examination of all the material presented

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25                   <sup>1</sup>The record also contains a copy of an application for a third copyright, on the audiotape "Selling  
 26 in the 90's". However, on the record before the Court it does not appear that the registration has been  
 27 completed.

1 until the evidentiary weight to be accorded the certificates of registration has been determined.

2 Accordingly, it is hereby ORDERED:

3 (1) Defendants' and counterclaim plaintiffs' motion for partial summary judgment (Dkt. # 25)  
4 shall be RE-NOTED on the Court's calendar for June 24, 2005. Plaintiff may file a supplemental  
5 response to the motion, addressing the matters raised herein, by June 20, and defendants may file a  
6 supplemental reply by June 24.

7 (2) The deferral of this ruling shall not constitute grounds for changing the date of the settlement  
8 conference now scheduled before the Honorable James Robart. The parties may, however, stipulate to  
9 re-noting this motion and the supplemental briefing to a later date, so as not to interfere with preparation  
10 for the settlement conference.

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12 DATED this 9th day of June, 2005.  
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15 /s/ Ricardo S. Martinez  
16 RICARDO S. MARTINEZ  
17 UNITED STATES DISTRICT JUDGE  
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ORDER ON DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT - 1